

REMARKS

This amendment is submitted in response to the Official Action mailed July 2, 2007. Claims 10-18, 25, 26, 38, 45, and 51 are pending. Claims 10, 14, 25, 26, and 45 are amended to more particularly point out and distinctly claim the invention. In particular, claim 14 is amended to recite that the amount of the antibiotic supplement in the animal feed is less than 50% of an optimal antibiotic supplement. Support for this amendment is found at, for example, page 5, lines 17-22 of the originally-filed application. Claims 25 and 26 are amended to clarify that they refer to the anti-biotic supplement and the anti-bacterial fatty acid component of claim 14. Claims 10, 25, 26, and 45 are amended to recite an anti-microbial fatty acid component. Support for this amendment is found throughout the specification, for example, at page 1, lines 18-20 and page 3, lines 12-16. No new matter is added. In view of the above claim amendments and the following remarks, reconsideration by the Examiner and allowance of the application is respectfully requested.

Initially, Applicants gratefully acknowledge the withdrawal of the previous rejections under 35 U.S.C. § 112, second paragraph, and 35 U.S.C. § 103(a).

Turning to the Official Action, claims 14, 25, 26, and 51 are objected to under 37 C.F.R. 1.75(c) as being of improper dependent form for failing to further limit the subject matter of a previous claim. Specifically, “[t]he recitation of further comprising at least one antibiotic in claim 14 broadens claims 10 because claim 10 replaces all of an antibiotic supplement by reciting in an animal feed composition comprising crude protein and an antibiotic supplement, the improvement comprising replacing all said antibiotic supplement.” (Office Action, page 3).

However, claim 10 actually recites: “the improvement comprising replacing all or a portion of said antibiotic supplement with an anti-bacterial amount of an anti-microbial fatty acid component. . . .” (Emphasis added). Amended claim 14, and the claims depending therefrom, further limits claim 10 by defining the amount of the remaining portion of the antibiotic supplement as less than 50% of an optimal antibiotic supplement. Therefore, this objection is respectfully traversed.

Claims 14, 25, 26, and 51 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Specifically, the Office Action alleges that “[t]he specification does not contemplate an animal feed composition as set forth in claim 10 wherein a portion of said antibiotic supplement has been replaced wherein said animal feed composition further comprises at least one antibiotic.” (Office Action, page 3). However, as noted above, support for the amendment to claim 14 is found at, for example, page 5, lines 17-22 of the originally-filed application. Therefore, this rejection is respectfully traversed.

Claims 13, 14, 25, 26, and 51 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, claim 13 is rejected because “the metes and bounds of ‘essentially free of antibiotic supplements’ is not clear. (Office Action, page 6).

Claims 14, 25, 26, and 51 are rejected because the phrase “further comprising at least one antibiotic” in claim 14 lacks clarity and antecedent basis. This phrase is deleted from currently-amended claim 14. Therefore, this rejection is respectfully traversed.

Claims 10-13, 18, 38, and 45 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,160,041 to Schroeder et al. Schroeder et al. is cited as teaching an animal feed supplement comprising crude protein, an antibiotic, and high lauric acid natural oil. The disclosure of coconut oil and palm oil at column 5 lines 50-54 and lines 60-62 of Schroeder et al. is cited by the Office Action as teaching the high lauric acid natural oil component.

However, Schroeder et al. does not disclose or suggest an animal feed composition, which includes crude protein and an antibiotic supplement, wherein all or a portion of the antibiotic supplement is replaced with an anti-bacterial amount of an anti-microbial fatty acid component, wherein the anti-microbial fatty acid component is a high lauric acid natural oil, or a derivative thereof having a high lauric acid content, as required in claim 10 of the present application.

At Column 2, Table 1, Schroeder et al. discloses proportions of possible ingredients for inclusion in an animal feed supplement. The only required ingredients are a sugar source, a phosphate source, a metal oxide, an emulsifier, and preservatives. While a fat source is mentioned as an optional ingredient, Schroeder et al. never discloses or suggests combining a natural oil high in lauric acid with crude protein. The fat source used in the Examples includes yellow grease, palm oil, and/or mixed vegetable oils, none of which are high in lauric acid. Contrary to the assertion of the Office Action, palm oil is high in palmitic acid, not lauric acid. As noted throughout the present application, e.g. page 3, line 20, it is palm kernel oil which is a natural oil high in lauric acid. Palm kernel oil is not disclosed by Schroeder et al. Coconut oil is mentioned once by Schroeder et al. However, it appears among a list of nine “suitable” oils at Column 5, lines 58-62 and is never recited in combination with crude protein.

Furthermore, Schroeder et al. does not disclose or suggest combining a natural oil high in lauric acid, crude protein, and an antibiotic supplement. The Examples do not recite the inclusion of antibiotics. Antibiotics are only mentioned once by Schroeder et al. at Column 7, line 67 among a list of optional “miscellaneous ingredients.” Because Schroeder et al. does not disclose or suggest combining a natural oil high in lauric acid with crude protein or combining a natural oil high in lauric acid, crude protein, and an antibiotic supplement, this rejection is respectfully traversed.

Claims 10-14, 15-18, 25, 26, 38, 45, and 51 are rejected under 35 U.S.C. §103(a) as being unpatentable over Schroeder et al. in view of 21 C.F.R. §§ 558.4, 558.15, 558.78, 558.128, and 558.355, and J. Raloff, Science News, vol. 154, p. 39 (July 18, 1998). 21 C.F.R. § 558 is cited as teaching approved allowable animal feed antibiotics and their maximum amounts and optimal use levels in animal feeds. (See Office Action, page 12). J. Raloff is cited as teaching “that ‘cases of antibiotic resistant human disease have clearly occurred due to bacteria from livestock treated with drugs’ and teaches ‘propitious use of subtherapeutic antibiotics and if there are alternatives, consider using them.’” (Id.).

Initially, Applicants note that J. Raloff is not prior art against the present application. The present application claims priority to U.S. Application Serial No. 60/090,303, which was

filed on June 23, 1998. J. Raloff is dated July 18, 1998. Even so, the disclosure of J. Raloff does not remedy the defects of Schroeder et al., which does not disclose or suggest combining a natural oil high in lauric acid and a crude protein or a natural oil high in lauric acid, crude protein, and an antibiotic supplement. J. Raloff also does not disclose or suggest these combinations.

21 C.F.R. § 558 also does not remedy the defects of Schroeder et al. 21 C.F.R. § 558 does not disclose or suggest combining a natural oil high in lauric acid and a crude protein or a natural oil high in lauric acid, crude protein, and an antibiotic supplement. Therefore, the rejection of claims 10-14, 15-18, 25, 26, 38, 45, and 51 in view of Schroeder et al. and further in view of 21 C.F.R. §§ 558.4, 558.15, 558.78, 558.128, and 558.355, and J. Raloff is respectfully traversed.

Applicant: B. Teter
Application No. 09/720,136

Docket No. 73481.00067 (P29,546-A USA)

CONCLUSION

In view of the above claim amendments and the foregoing remarks, this application is believed to be in condition for allowance. Reconsideration is respectfully requested. However, the Examiner is requested to telephone the undersigned if there are any remaining issues in this application to be resolved.

Finally, if there are any additional charges in connection with this response, the Examiner is authorized to charge Applicant's deposit account number 50-1943 therefor.

Respectfully submitted,

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